

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

VS.

4:05-CR-00184-WRW

BOBBY JOE MOORE

ORDER

Pending is Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582(c) (Doc. No. 27). Defendant, who was sentenced for felon in possession of a firearm,¹ asserts that his sentence should be reduced based on recent changes in the U.S. Sentencing Guidelines.

On November 1, 2007, the United States Sentencing Commission adopted Amendment 709, which amended § 4A1.2 -- the guideline addressing how misdemeanor and petty offenses are calculated when determining a defendant's criminal history score. Defendant asserts that his sentence should be modified under 18 U.S.C. § 3582(c)(2), based on this amendment.

Since Defendant was sentenced before November 1, 2007, Amendment 709 must be retroactive to apply in this case. Guideline § 1B1.10, titled Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement), lists all Guideline Amendments that are retroactive.² Since Amendment 709 is not listed in § 1B1.10(c), it is not retroactive and, therefore, not applicable in this case.

¹Doc. No. 21.

²U.S. SENTENCING GUIDELINES MANUAL § 1B1.10(c) (Supp. 2007) reads: "Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, and 706 as amended by 711." See also, *U.S. v. Cofield*, No. 07-4502, 2007 WL 4532938 (4th Cir. Dec. 26, 2007) (holding that Amendment 709 is not retroactive); *U.S. v. Godin*, 2008 WL 1006669 (1st Cir. April 10, 2008) (holding that Amendment 709 is not retroactive).

CONCLUSION

Based on the findings of fact and conclusions of law above, Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582(c) (Doc. No. 27) is DENIED.

IT IS SO ORDERED this 15th day of April, 2008.

/s/ Wm. R. Wilson, Jr. _____
UNITED STATES DISTRICT JUDGE